

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Joann Tancredi,

Index No.: 1:18-CV-06394

Plaintiff,

**THIRD PARTY
SUMMONS**

- against -

The Rector, Church-Wardens And Vestrymen of
Trinity Church, in the City of New-York, also known
as "St. Paul's Chapel," John Does, 1-5,

Defendants.
-----X

The Rector, Church-Wardens And Vestrymen of
Trinity Church, in the City of New-York, also known
as "St. Paul's Chapel,"

Third Party Plaintiff,

-against-

First Quality Maintenance II, LLC

Third Party Defendant.
-----X

S I R S :

TO THE ABOVE NAMED THIRD PARTY DEFENDANT:

YOU ARE HEREBY SUMMONED TO APPEAR, and answer the Complaint of the Third Party Plaintiff, a copy of which is hereby served upon you, and serve copies of your answer upon McCarthy & Associates, attorneys for the third party plaintiffs, whose address is One Huntington Quadrangle, Suite 2C18, Melville, New York, 11747, and upon counsel for the plaintiff, within twenty (20) days after the service thereof exclusive of the date of service or within thirty (30) days after service is completed if service is made by any method other than personal delivery upon you within the State of New York.

In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Melville, New York
March 25, 2019

Yours, etc.,



Michael D. Kern, Esq.
McCARTHY & ASSOCIATES
Attorneys for Defendant
The Rector, Church-Wardens And
Vestrymen of Trinity Church, in the
City of New-York, also known as
"St. Paul's Chapel,"
One Huntington Quadrangle, Suite 2C18
Melville, New York 11747
(631) 756-2024
File No.: 19-271100 (K)

SERVICE UPON:

First Quality Maintenance

TO: ROBERT J. DeGROOT, ESQ.
Attorneys for Plaintiff
JOANN TANCREDI
56 Park Place
Newark, NJ 07102
(973) 643-1930

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Joann Tancredi,

Index No.: 1:18-CV-06394

Plaintiff,

**THIRD PARTY
COMPLAINT**

- against -

The Rector, Church-Wardens And Vestrymen of
Trinity Church, in the City of New-York, also known
as "St. Paul's Chapel," John Does, 1-5,

Defendants.
-----X

The Rector, Church-Wardens And Vestrymen of
Trinity Church, in the City of New-York, also known
as "St. Paul's Chapel,"

Third Party Plaintiffs,

-against-

First Quality Maintenance II, LLC,

Third Party Defendant.
-----X

Defendant/third-party plaintiff, by its attorneys, McCARTHY & ASSOCIATES,
complaining of the impleaded third-party defendant, First Quality Maintenance, alleges:

THE PARTIES

1. That at all times mentioned in the Complaint, the defendant/third-party
plaintiffs The Rector, Church-Wardens And Vestrymen of Trinity Church, in the City of
New-York, also known as "St. Paul's Chapel," are residents of the State of New York.

2. That on or about July 14, 2018, the plaintiff herein commenced an action against the defendant/third-party plaintiff to recover damages for injuries sustained due to defendants' alleged negligence.

3. That the defendants/third-party plaintiffs generally deny the allegations set forth within the plaintiff's Complaint.

4. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, was a duly registered domestic corporation authorized to conduct business in the State of New York.

5. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, was and is a duly registered domestic partnership authorized to conduct business in the State of New York.

6. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, was and is a business entity authorized to conduct business in the State of New York.

7. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, was and is a foreign limited liability company authorized to conduct business in the State of New York.

8. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, did business within the State of New York.

9. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, committed a tortious act within the State of New York.

10. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, derived substantial revenue from the conduct of business in the State of New York.

11. That at all times mentioned in the Complaint, the third-party defendant, First Quality Maintenance, had sufficient contacts within the State of New York to subject it to both general and long arm jurisdiction in the State of New York.

12. Plaintiff's alleged accident happened on August 17, 2017.

13. At the time of the alleged incident, Plaintiff was walking on along the sidewalk adjacent to Vesey Street towards the direction of the intersection of Vesey Street and Church Street in New York City ("the sidewalk").

14. Third Party Defendant, First Quality Maintenance, performed patching work on the sidewalk around the time of the plaintiff's alleged accident at the location of plaintiff's accident.

15. Third Party Defendant, First Quality Maintenance, was responsible for the work they performed.

16. Third Party Defendant, First Quality Maintenance, was responsible for the inspection, repair and maintenance of the sidewalk.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST FIRST QUALITY MAINTENANCE**

17. Defendant/third party plaintiff repeats and reiterates each and every allegation set forth in paragraphs “1” through “16” as if fully set forth herein.

18. First Quality Maintenance is obligated to defend, indemnify and hold defendant/third party plaintiff harmless with respect to all any and all claims arising out of and/or in connection with any accidents that took place where plaintiff is claiming that her accident took place.

19. The underlying lawsuit was commenced as a result of an accident that took place because First Quality Maintenance failed to direct, control and supervise its employees and failed to properly protect its work.

20. The underlying lawsuit was commenced as a result of an accident that took place because First Quality Maintenance failed to properly inspect their work which caused and/or contributed to plaintiff’s accident.

21. The underlying lawsuit was commenced as a result of an accident that took place because First Quality Maintenance failed to properly inspect, repair and maintain the sidewalk.

22. Therefore, First Quality Maintenance is obligated to defend, indemnify and hold defendant/third party plaintiff harmless in connection with the underlying lawsuit as well as damages, verdicts, judgments, costs, fees, penalties or expenses of any kind that defendants/third party plaintiffs incur, pay or becomes legally obligated to pay as a result of the underlying action.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST FIRST QUALITY MAINTENANCE**

23. Defendant/third party plaintiff repeats and reiterates each and every allegation set forth in paragraphs “1” through “22” as if fully set forth herein.

24. First Quality Maintenance agreed to provide a policy of insurance naming defendant/third party plaintiff as named additional insureds that would provide primary coverage and non-contributing to any other insurance that might be carried by defendant/third party plaintiff that covered any and all accidents arising out of the work being performed by the Third Party Defendant.

25. First Quality Maintenance has breached the agreement by failing to provide the requisite insurance.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST FIRST QUALITY MAINTENANCE**

26. Defendant/third party plaintiff repeats and reiterates each and every allegation set forth in paragraphs “1” through “25” as if fully set forth herein.

27. If Defendant/third party plaintiff is held liable to anyone in this action, its liability and damages will have arisen out of the affirmative active and primary negligence of First Quality Maintenance, its agents, servants, or employees, and without any active or primary negligence or active participation on the part of Defendant/third party plaintiff, and that if any negligence or liability is found to exist on the part of Defendant/third party plaintiff, that liability and negligence would be secondary or passive or the result solely of the operation of law as opposed to the negligence of First Quality Maintenance, whose liability and negligence will be active and primary as First

Quality Maintenance actually caused, created, maintained, controlled and was responsible for the condition alleged in plaintiff's complaint in that First Quality Maintenance was negligent and careless, and if plaintiff's allegations are proven true at trial, that Defendant/third party plaintiff will be entitled to, and demands, common law indemnification from First Quality Maintenance for the amount of any verdict or judgment that may be recovered against it in this action.

**AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST FIRST QUALITY MAINTENANCE**

28. Defendant/third party plaintiff repeats and reiterates each and every allegation set forth in paragraphs "1" through "27" as if fully set forth herein.

29. If Defendant/third party plaintiff is held liable to anyone in this action, their liability and damages will have arisen out of the affirmative active and primary negligence of First Quality Maintenance, its agents, servants, or employees, and without any active or primary negligence or active participation on the part of Defendant/third party plaintiff, and that if any negligence or liability is found to exist on the part of Defendant/third party plaintiff, that liability and negligence would be secondary or passive or the result solely of the operation of law as opposed to the negligence of First Quality Maintenance, whose liability and negligence will be active and primary as First Quality Maintenance actually caused, created, maintained, controlled and was responsible for the condition alleged in plaintiff's complaint in that First Quality Maintenance was negligent and careless, and if plaintiff's allegations are proven true at trial, that Defendant/third party plaintiff will be entitled to, and demands, contribution

from First Quality Maintenance for its proportionate share of any verdict or judgment that may be recovered against it in this action.

WHEREFORE, on the First, Second, Third, and Fourth Causes of Action, Defendant/Third Party Plaintiff demands judgment directing Third Party Defendant, First Quality Maintenance, to defend, indemnify and hold Defendant/Third Party Plaintiff harmless in connection with the underlying lawsuit.

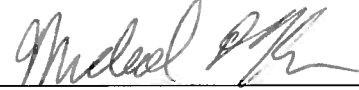
WHEREFORE, on the First, Second, Third and Fourth Causes of Action, Defendant/third party plaintiff demands judgment directing First Quality Maintenance to defend, indemnify and hold defendant/third party plaintiff harmless in connection with the underlying lawsuit.

WHEREFORE, on the First, Second, Third and Fourth Causes of Action, defendant/third party plaintiff demands judgment directing First Quality Maintenance to reimburse defendant/third party plaintiff for attorneys' fees and expenses incurred in defending the underlying lawsuit.

PLEASE TAKE NOTICE that pursuant to CPLR 3402(b), the title of this action has been changed from the title of the plaintiff's Complaint to the title of this Third-Party Summons and Third-Party Complaint.

Dated: Melville, New York
March 25, 2019

Yours, etc.,



Michael D. Kern, Esq.
McCARTHY & ASSOCIATES
Attorneys for Defendant
The Rector, Church-Wardens And
Vestrymen of Trinity Church, in the
City of New-York, also known as
“St. Paul’s Chapel,”
One Huntington Quadrangle, Suite 2C18
Melville, New York 11747
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First Quality Maintenance

TO: ROBERT J. DeGROOT, ESQ.
Attorneys for Plaintiff
JOANN TANCREDI
56 Park Place
Newark, NJ 07102
(973) 643-1930

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Joann Tancredi,

Plaintiff,

- against -

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in the City of New-York, also known as "St. Paul's Chapel,"
John Does, 1-5,

Defendant.

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The Rector, Church-Wardens And Vestrymen of
Trinity Church, in the City of New-York, also known
as "St. Paul's Chapel,"

Third Party Plaintiff,

-against-

First Quality Maintenance,

Third Party Defendant.

THIRD PARTY SUMMONS AND COMPLAINT

McCARTHY & ASSOCIATES

Attorneys for Defendant
One Huntington Quadrangle
Suite 2C18
Melville, New York 11747-4412
631-756-2024
Fax: 631-756-2033